

Message Text

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FM AMEMBASSY BONN
TO SECSTATE WASHDC NIACT IMMEDIATE 0630
AMEMBASSY PARIS IMMEDIATE
INFO USMISSION USBERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
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C O N F I D E N T I A L SECTION 01 OF 04 BONN 13241

DEPARTMENT PLEASE NOTIFY EUR/CE UPON RECEIPT

E.O. 11652: GDS
TAGS: BQG, PGOV
SUBJECT: FRG POSITIVE RESPONSE TO ALLIED RECOMMENDATIONS
IN LORENZ CASE

REFS: (A) BONN 13175; (B) BONN 13015;
(C) BONN 13009; (D) PARIS 23285

BEGIN SUMMARY: MAJOR PROGRESS HAS BEEN ACHIEVED IN
OBTAINING FRG AGREEMENT TO THE ALLIED PROPOSALS REGARDING
THE LORENZ TRIAL BUT THE FRENCH STILL INSIST THAT OBERLE
BE APPOINTED HEAD OF THE PROSECUTION TEAM. WE
RECOMMEND THAT HIGH-LEVEL DEMARCHES BE MADE TO THE
FRENCH IN WASHINGTON AND PARIS. THE UK EMBASSY HERE
IS ALSO RECOMMENDING DEMARCHES TO THE FRENCH, ALTHOUGH
WE DO NOT KNOW WHERE OR AT WHAT LEVEL. ACTION REQUESTED:
SEE PARAGRAPH 11. END SUMMARY.

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1. FRG BONN GROUP REP (VON BRAUNMUEHL) CALLED A
BONN GROUP MEETING ON AN URGENT BASIS THIS AFTERNOON.
HE SAID THAT THE ALLIED PROPOSALS REGARDING THE
LORENZ TRIAL WERE DISCUSSED BY WISCHNEWSKI, SPANGENBERG,
KORBER, GAUS AND VAN WELL AT THEIR MEETING YESTERDAY
(REF A) AND THEY HAD AGREED THE ALLIED PROPOSALS WERE

REASONABLE AND FAIR. FOR PURPOSES OF CONVENIENCE THE ALLIED PROPOSALS WHICH INCLUDE THE FOUR UK PROPOSALS (REF C) AS WELL AS THE FRENCH PROPOSAL REGARDING TIMELY ATTENTION TO THE SECURITY MEASURES OF THE TRIAL (REF B), ARE REPEATED HERE AS FOLLOWS:

(A) OBERLE, HEAD OF THE FEDERAL PROSECUTOR'S OFFICE IN BERLIN, AND HIS DEPUTY, HELDENBERG, COULD BE FORMALLY APPOINTED TO LEAD THE PROSECUTION (THIS WOULD BE INTENDED TO REDUCE THE ADVERSE IMPRESSION GIVEN BY KAUL'S SIGNING OF THE INDICTMENT);

(B) THE LAWYERS WHO HAVE BEEN SECONDED FROM KARLSRUHE COULD BE ASSIGNED TO THE BERLIN OFFICE OF THE FEDERAL PROSECUTOR FOR THE DURATION OF THE TRIAL, ARRIVING THERE WELL IN ADVANCE AND REFRAINING FROM COMMUTING OSTENTATIOUSLY BETWEEN BERLIN AND KARLSRUHE;

(C) IF THE FEDERAL GOVERNMENT COULD REFER TO THE INTERNAL ASSIGNATION ORDER OF 7 JULY, THIS WOULD BE HELPFUL;

(D) SUBSEQUENT OFFICIAL STATEMENTS ON THE CASE COULD BE MADE IN BERLIN RATHER THAN BONN OR KARLSRUHE.

(E) FRENCH PROPOSAL FOR COORDINATION
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OF SECURITY MEASURES PRIOR TO THE TRIAL.

2. VON BRAUNMUEHL SAID THAT THE WISCHNEWSKI GROUP AGREED TO ASK JUSTICE MINISTER VOGEL (WITHOUT MAKING A FORMAL RECOMMENDATION) WHETHER PROPOSAL A WOULD BE POSSIBLE, HAS ALREADY OBTAINED VOGEL'S AGREEMENT TO PROPOSAL B (WITHOUT CHANGING THE FORMAL TERMS OF THE METHOD OF ASSIGNMENT--I.E. "ZUTEILUNG"--AND WITH AGREEMENT THAT ATTORNEYS WILL NOT TRAVEL BY LAND), HAS OBTAINED

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HIS AGREEMENT TO A DRAFT PRESS STATEMENT (INFRA)
ANNOUNCING THE ASSIGNMENTS AND HAS STRONGLY RECOMMENDED
PROPOSALS D AND E. VON BRAUNMUEHL SAID THAT THE FRG
CONSIDERS THIS A DEMONSTRATION OF THE FRG'S GOOD
WILL AND ITS DESIRE TO MAINTAIN ALLIED SOLIDARITY. HE
ASSUMES THAT RECOMMENDATIONS D AND E WILL BE ACCEPTED
BY VOGEL SINCE THE WISCHNEWSKI GROUP, ALTHOUGH AN
INFORMAL ONE, IS POLITICALLY QUITE POWERFUL AND IS
USED FOR INFORMAL COORDINATION OF MATTERS OF IMPORTANCE.

3. VON BRAUNMUEHL SUGGESTED THE FOLLOWING PRESS
STATEMENTS, WHICH INCLUDES A BRACKETED PORTION SUG-
GESTED IN RESPONSE TO A FRENCH REQUEST (PARA 6 INFRA),
FOR ISSUANCE BY THE FRG, PRESUMABLY IN BONN:

BEGIN TEXT

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IN APPOINTING THE PROSECUTORS FOR THE PROCEEDINGS
AGAINST THE "SECOND OF JUNE MOVEMENT", NOT ONLY THE
RELEVANT GERMAN LEGISLATION IN THE AREAS OF CRIMINAL
LAW, CRIMINAL PROCEDURE AND THE RULES OF COURT, WHICH
HAS BEEN TAKEN OVER IN BERLIN, BUT ALSO ALLIED LAW IN
FORCE IN BERLIN HAD TO BE TAKEN INTO CONSIDERATION.

THE PROSECUTION WILL BE REPRESENTED BY FIRST OBER-
STAATSANWALT VOELZ, OBERSTAATSANWALT WIDERA AND STAATS-
ANWALT JAECKEL, WHO, EFFECTIVE AS OF JULY 7,

1977, HAVE BEEN ATTACHED TO THE BERLIN OFFICE OF THE FEDERAL PROSECUTOR BEGIN BRACKETS WHICH IS UNDER THE DIRECTION OF BUNDESANWALT OBERLE END BRACKETS. THE BERLIN OFFICE OF THE FEDERAL PROSECUTOR, LIKE ALL FEDERAL OFFICES IN BERLIN (WEST), IS SUBORDINATE TO THE SUPREME AUTHORITY WHICH, AS IS KNOWN, THE THREE POWERS EXERCISE IN BERLIN (WEST).

END TEXT.

4. THE UK REP (EYERS) AND US REP WELCOMED VON BRAUNMUEHL'S REPORT AND EXPRESSED GRATITUDE FOR THE FRG'S COOPERATIVE STEPS. THE UK REP PUSHED AGAIN FOR AN ALLIED PRESS STATEMENT (REPORTED SEPTEL). THE FRENCH REP (RICHARD) SAID THAT HE WAS OBLIGED TO RESERVE THE FRENCH POSITION AND SAID THAT PARIS CONSIDERS UK PROPOSAL A TO BE THE MOST IMPORTANT. HE ALSO SAID THAT PARIS DOES NOT NECESSARILY AGREE THAT METHOD OF ASSIGNMENT OF THE THREE KARLSRUHE ATTORNEYS SATISFIES THE REQUIREMENT OF THE NON-PAPER THAT THEY "BELONG" TO THE BERLIN OFFICE. HE SAID THAT UNTIL UK PROPOSAL A IS COMPLIED WITH, THERE IS LITTLE CHANCE THAT PARIS WILL ACCEPT THE PROPOSALS.

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5. VON BRAUNMUEHL SAID THAT THE QUESTION HAD BEEN PUT TO VOGEL WHETHER IT WOULD BE POSSIBLE TO PUT OBERLE IN CHARGE (EITHER IN APPEARANCE OR IN REALITY) OF THE PROSECUTION BUT THAT PEOPLE IN BERLIN KNOW OBERLE AND ARE CONSCIOUS OF THE FACT THAT HE IS NOT A TRIAL LAWYER. THE FRG DOES NOT WANT TO TURN THIS TRIAL INTO A FARCE AND WHILE THE FRG HAS NO PROBLEM WITH SAYING PUBLICLY THAT THE ATTORNEYS REPORT TO OBERLE, IT MIGHT BE DIFFICULT TO PUT HIM IN EFFECTIVE CHARGE OF THE TRIAL. THE US REP SAID THAT WE WOULD WELCOME ANYTHING THAT THE GERMANS CAN REASONABLY DO TO GIVE THE APPEARANCE THAT OBERLE IS LEADING THE TRIAL BUT THAT, AS WE SAID BEFORE, WE DO NOT PROPOSE TO INTERFERE WITH THE FRG'S JUDGMENT AS TO WHO SHOULD CONDUCT THE PROSECUTION. EYERS EXPRESSED APPRECIATION FOR VON BRAUNMUEHL'S ARGUMENT AND SAID THAT EVEN STATING THAT OBERLE WAS IN CHARGE COULD RESULT IN ADVERSE PUBLICITY SINCE HE MIGHT "STICK OUT LIKE A SORE THUMB" AND THE SPRINGER PRESS IS FOND OF STRIKING SORE THUMBS. THE PRESS COULD BE EXPECTED TO INQUIRE WHY IT IS THAT OBERLE HAS BEEN APPOINTED TO HEAD SUCH AN IMPORTANT TRIAL. THIS MIGHT LEAD TO EXPOSURE OF THE ALLIED ROLE AND UNWELCOME STATEMENTS REGARDING GERMAN LEGAL UNITY AND THE CONSTITUTIONAL COURT DECISION ON BERLIN AS A LAND OF THE FEDERAL REPUBLIC.

6. RICHARD ASKED WHETHER IT MIGHT BE POSSIBLE TO REFER TO OBERLE IN THE DRAFT FRG PRESS STATEMENT WHICH THE FRG PRESENTED FOR CONSIDERATION IN ORDER TO SATISFY UK PROPOSAL C. THE US REP SUGGESTED THAT ONE POSSIBILITY WOULD BE TO INCLUDE THE PHRASE "WHICH IS UNDER THE DIRECTION OF BUNDESANWALT OBERLE" (INCLUDED IN BRACKETS IN

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PARAGRAPH 3 SUPRA). HE NOTED, HOWEVER, THAT THERE MIGHT BE UNWELCOME PRESS INQUIRIES AS TO WHY OBERLE WAS SPECIFICALLY MENTIONED AND EYERS SUGGESTED WE MIGHT USE THIS PHRASE AS PRESS GUIDANCE IN ANSWER TO QUESTIONS. EYERS SAID THAT HE HOPED THE FRENCH WOULD LIFT THEIR RESERVATION TO BOTH THE PROPOSED FRG PRESS STATEMENT AND THE PROPOSED ALLIED PRESS STATEMENT (REPORTED SEPTEL).

7. COMMENT: WE BELIEVE THAT SUBSTANTIAL PROGRESS HAS BEEN MADE IN THE LAST TWO DAYS AND THAT, IF THE RECOMMENDATIONS OF THE WISCHNEWSKI GROUP ARE ACCEPTED, WHAT THE GERMANS HAVE DONE SHOULD BE SUFFICIENT TO SATISFY ALLIED CONCERNS EVEN IF THEY ARE UNABLE TO

APPOINT OBERLE FORMALLY TO HEAD THE PROSECUTION TEAM.
THE FRENCH, HOWEVER, SEEM TO BE UNYIELDING AT THIS
POINT.
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9. JUDGING FROM RICHARD'S REMARKS HERE, AND ESPECIALLY FROM DE LABOULAYE'S REMARKS TO AMBASSADOR HARTMAN (REF D), IT APPEARS THAT THE FRENCH ARE ACTING AS MUCH FROM PIQUE AT OTHER RECENT FRG ACTIONS AS FROM A CONSIDERATION OF THE LORENZ CASE ON ITS MERITS. WHILE WE SHARE SOME OF THE FRENCH ANNOYANCE AT OTHER THINGS THAT HAVE BEEN GOING ON, OUR PRIMARY CONCERNS IN THE LORENZ CASE SHOULD BE (A) TO SEE THAT THE TRIAL IS CONDUCTED TO A SUCCESSFUL CONCLUSION, AS A MAJOR EFFORT TO CONTROL TERRORISM IN BERLIN AND THE FRG, WHILE (B) AVOIDING COMPLICATIONS WHICH WOULD CREATE MAJOR PROBLEMS WITH THE SOVIETS. IN OUR VIEW, THE STEPS WHICH THE WISCHNEWSKI GROUP IS RECOMMENDING WOULD MEET BOTH OF THOSE CRITERIA.

10. WE THUS BELIEVE THAT A HIGH-LEVEL EFFORT TO INDUCE GREATER FRENCH FLEXIBILITY SHOULD BE MADE. (WE NOTE WITH INTEREST DE LABOULAYE'S REFERENCE TO "HIS INSTRUCTIONS", WHICH WE ASSUME IMPLIES THAT DE GUIRINGAUD HIMSELF HAS SET THE PRESENT FRENCH LINE.) IT WOULD SEEM HIGHLY DESIRABLE FOR THE DEPARTMENT, IN RESPONSE TO THE DEMARCHES FROM THE FRENCH EMBASSY THERE, AS WELL AS EMBASSY PARIS, IN RESPONSE TO DE LABOULAYE'S COMMENTS, TO APPROACH THE FRENCH ALONG THE FOLLOWING LINES:

-- THE FRG HAS GONE FAR TO MEET THE ALLIED DEMANDS, EVEN THOUGH SOME OF THEM WERE NOT INCLUDED IN LAST YEAR'S NON-PAPER.

-- THE SOVIETS WILL NOT BE SATISFIED WITH ANYTHING LESS THAN MOVING THE TRIAL OUT OF BERLIN.
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SINCE IT IS POLITICALLY UNACCEPTABLE FOR US TO BAN THE TRIAL AT THIS POINT AND SINCE A CHANGE OF VENUE COULD BE A BASIS FOR APPEAL, OUR NEED AT THE PRESENT TIME IS TO FORMULATE A POSITION WHICH WILL PROVIDE A STRONG BASIS FOR ANSWERING THE SOVIET COMPLAINT.

-- THE FRG HAS CONSISTENTLY MADE THE POINT
THAT OBERLE IS NOT QUALIFIED TO LEAD THE PROSECUTION
AND WE DO NOT BELIEVE WE SHOULD INTERFERE WITH THE WAY

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THE TRIAL IS CARRIED OUT SINCE, TO DO SO, MIGHT
RESULT IN A FAILURE TO BRING THE TRIAL TO A SUCCESS-
FUL CONCLUSION. THE ALLIES HAVE A RESPONSIBILITY FOR
SECURITY IN BERLIN AND A FAILURE TO CONVICT PERPETRATORS
OF CRIMES, ESPECIALLY THOSE AS SERIOUS AS THE LORENZ
AND DRENCKMANN CASES, WOULD UNDERMINE THIS RESPONSI-
BILITY.

-- WITH RESPECT TO THE SPECIFIC POINT THAT THE
KARLSRUHE ATTORNEYS DO NOT "BELONG" TO THE BERLIN
OFFICE, WE ARE SATISFIED THAT THEY DO.
MOREOVER, THE ALLIES HAVE KNOWN FOR OVER A YEAR THAT
IT WOULD BE NECESSARY TO BRING ATTORNEYS FROM KARLSRUHE
TO AUGMENT THE STAFF OF THE BERLIN OFFICE WITH EXPERT
TRIAL LAWYERS.

-- EVEN IF THE SOVIETS CLAIM THE ATTORNEYS FROM

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KARLSRUHE DO NOT "BELONG" TO THE BERLIN OFFICE,
WE CAN NONETHELESS RELY ON BK/O 51(63) WHICH PROVIDES
THAT FEDERAL AUTHORITIES IN BERLIN EXERCISE THEIR
FUNCTIONS SUBJECT TO THE SAME POWERS AND JURISDICTION
OF THE ALLIED AUTHORITIES AS DO THE BERLIN AUTHORITIES.

11. ACTION REQUESTED: (1) THAT THE DEPARTMENT
AUTHORIZE US TO INFORM THE BONN GROUP THAT WE ACCEPT
THE FRG MEASURES (PROVIDING THE RECOMMENDATIONS OF
THE WISCHNEWSKI GROUP ARE ACCEPTED BY VOGEL) AS
SATISFYING OUR REQUIREMENTS; (2) THAT THE DEPARTMENT
UNDERTAKE, AND AUTHORIZE EMBASSY PARIS TO UNDERTAKE,
DEMARCHES TO THE FRENCH IN WASHINGTON AND PARIS
ALONG LINES OF PARA 9 ABOVE.
STOESSEL

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